

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Patricia T. Patterson,)	
)	C/A No. 0:10-0025-MBS
Plaintiff,)	
)	
vs.)	
)	ORDER
James R. Barber, III,)	
)	
Defendant.)	
_____)	

Plaintiff Patricia T. Patterson, proceeding pro se and in forma pauperis, brings this action against the Honorable James R. Barber, III, a South Carolina Circuit Court judge.¹ Plaintiff alleges that Defendant Barber violated her constitutional rights by denying her applications to proceed in forma pauperis in a state court action. Plaintiff seeks equitable and declaratory relief as well as Defendant Barber's disbarment.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Bristow Marchant for pretrial handling. The Magistrate Judge reviewed the complaint pursuant to the provisions of 28 U.S.C. § 1915. On January 19, 2010, the Magistrate Judge filed a Report and Recommendation in which he noted, among other things, that Defendant Barber is entitled to immunity from any claim for damages or injunctive relief arising out of his judicial actions in the underlying state court case. See 42 U.S.C. § 1983; Chu v. Griffith, 771 F.2d 79, 81 (4th Cir. 1985). Accordingly, the Magistrate Judge recommended that the within action be summarily dismissed. Plaintiff filed objections to the Report and Recommendation on February _____

¹The complaint was construed as naming George Funderburk, Susan Barden, and David Huffstertler as Defendants. Plaintiff informs the court that this was in error and that the complaint is against Defendant Barber only. Entry 12, 3. Accordingly, Defendants Funderburk, Barden, and Huffstertler are dismissed.

1, 2010. She also filed a motion to supplement the complaint on March 8, 2010.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

Pursuant to Fed. R. Civ. P.15(a), a party may amend a pleading once as a matter of course (a) within 21 days after serving it, or (b) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier. The complaint not having been served, Plaintiff's motion to amend or supplement the complaint (Entry 14) is granted.

The court has considered both the original complaint and supplemental verified complaint filed by Plaintiff, as well as her objections to the Magistrate Judge's Report. However, as the Magistrate Judge properly noted, Defendant Barber is entitled to judicial immunity under § 1983 claim. Defendant Barber's decision to deny her application for in forma pauperis status in state court was made as a result of his performance of a judicial function. Plaintiff's objections are without merit.

The court has thoroughly reviewed the record and Report and Recommendation. The court adopts the Report and Recommendation and incorporates it herein by reference. Plaintiff's § 1983

complaint is dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

June 9, 2010.

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that she has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.